

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

ON-LINE TRAVEL COMPANY (OTC)
HOTEL BOOKING ANTITRUST
LITIGATION

Case No. 3:12-MD-2405-B

(This Document Relates to All Cases)

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE ORIGINAL
AND CONSENSUS PLAINTIFFS' REQUEST FOR APPOINTMENT
OF HAGENS BERMAN AS INTERIM LEAD COUNSEL AND
STANLEY IOLA AS LIAISON COUNSEL FOR THE PUTATIVE CLASS**

This supplemental memorandum is submitted on behalf of the Plaintiffs and Counsel set forth below, all of whom support appointment of Hagens Berman Sobol Shapiro LLP as Lead Counsel and Stanley Iola LLP as Liaison Counsel for the putative class in this case. In considering that request, the Court should be advised of the following.

At the February 25th conference, one of the counsel urging appointment of the Smith Group stated that a "deal" had been made involving counsel supporting Hagens Berman. We have no interest in recriminations of any kind, but we want to be very clear: that statement has no basis in fact. There has been no "deal," promise or commitment of any kind, written or unwritten, between Hagens Berman or Stanley Iola and any of the many firms supporting their appointment as sole lead and liaison counsel in this case.

Because this erroneous statement was made, counsel supporting appointment of Hagens Berman and Stanley Iola should also be clear about the reasons we unanimously support the leadership structure proposed by the Original and Consensus Plaintiffs:

First, as Mr. Berman correctly represented, this is a proprietary case developed principally through the factual and legal investigation of the Hagens Berman firm. As Federal Rule of Civil Procedure 23(g) recognizes, this is an important factor in determining lead counsel. Indeed, where one firm has devoted significant time and resources to investigation and development of an antitrust case – and other firms then try to displace it as a lead or co-lead counsel – this has the potential to undermine private enforcement of the antitrust laws by discouraging firms from making the substantial investment required to investigate and develop such cases. Accordingly, on the facts of this case, this should be a significant factor favoring appointment of Hagens Berman as lead counsel.¹

Second, as the submissions by the Hagens Berman firm make clear, it is highly qualified to serve as lead counsel in this complex antitrust class action. While the firms below are also highly qualified – and have served as lead or co-lead counsel in many antitrust class actions – these counsel have agreed to support Hagens Berman as lead in this case not because of any “deal” or other commitment, but because on the facts presented here, this is the most efficient and sensible manner to proceed in this case.²

Third, while counsel for the three firms seeking co-leads (“the Smith Group”) argue that they offer a more efficient model, we believe the opposite conclusion is true. On the facts of this

¹ One of the three other firms seeking a co-lead position represented that it also devoted substantial time to the investigation of this case. We, of course, are in no position to evaluate that claim, but offer the following observations. The fact that a firm devoted significant time to investigation over a year period, but took no action to file the case – until Hagens Berman had filed – hardly supports the conclusion that the firm should then assume a leadership position for the class. That is particularly true here, where the follow-on complaint simply copies the factual allegations and legal analysis set forth in the Hagens Berman complaint. If anything, those facts should weigh *against* a leadership position.

² There are more than 25 experienced law firms that comprise the Consensus Group and many with significant antitrust class action experience. Each of the firms’ website details this experience; by way of example only, see <http://kaplanfox.com/practiceareas/competitionlaw/practice.html>; <http://bm.net/practice-areas/antitrust>; <http://www.cpmlegal.com/practices-Antitrust.html>; <http://www.girardgibbs.com/antitrust-law/>. These descriptions of antitrust practice are exemplary only and certainly non-exclusive.

case, appointing a single firm lead – and, in particular, a firm with extensive experience in the management of antitrust class action litigation – is most likely to result in efficiencies and avoid duplication. The efficient allocation of work will be directed by a firm with substantial expertise in such matters and will, with the Court’s approval, be subject to the [Proposed] Guidelines to Limit Costs and Expenses, Including Attorneys’ Fees. Indeed, the ability of the proposed leadership structure to move this case forward in an efficient and sensible manner is evidenced by the Original and Consensus Plaintiffs’ Position Statement (and the exhibits filed therewith), which reflects a clear vision, grounded in experience, regarding the manner in which many of the procedural issues posed by this case can efficiently and effectively be addressed.

All of the firms set forth below understand that the proposed leadership structure may or may not result in *any* work for these firms. Notwithstanding this, we unanimously support the proposed leadership structure because it is in the best interests of this litigation and the putative class.

Finally, we urge the Court to adopt the leadership structure proposed by the Original and Consensus Plaintiffs, rather than a combination of the two competing proposals. This result is dictated here by the factors described in Federal Rule of Civil Procedure 23(g). It also appropriately avoids placing counsel for the Smith Group in a favored position over the many counsel listed below, who would be highly qualified to lead or co-lead this litigation but have elected to support Hagens Berman based on the proprietary nature of the case, the factors set forth in Rule 23(g), and the best interests of the putative class in the circumstances presented here.

DATED: February 28, 2013

Respectfully Submitted,

By: /s/ Kit A. Pierson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 28, 2013 the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

Dated: February 28, 2013

/s/ Kit A. Pierson

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